

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

---

DAVID G. KANGAS,

Civ. No. 11-667 (DWF/LIB)

Plaintiff,

v.

**REPORT AND  
RECOMMENDATION**

MICHAEL J. ASTRUE, COMMISSIONER  
OF SOCIAL SECURITY,  
Defendant.

---

This matter came before the undersigned United States Magistrate Judge upon a routine supervision of the cases and a general assignment made in accordance with the provisions of 28 U.S.C. § 636.

Plaintiff commenced this action March 17, 2011. As of August 10, 2011, the Defendant had not yet made an appearance in this action even though more than 120 days had passed since Plaintiff had filed his Complaint. As such, the Court issued an Order directing Plaintiff as follows:

“Within 20 days of today’s date, Plaintiff shall provide proof of service or show good cause for an extension of time to serve the Defendant. If Plaintiff fails to comply with these directives, the undersigned will recommend that this action be dismissed for failure to effect proper service and for failure to prosecute.”

(Dkt. 5, at pp. 2); see also, Fed. R. Civ. Pro. 4(m)(“If a defendant is not served with 120 days after the complaint is filed, the court – on motion or on its own after notice to the plaintiff – must dismiss the action without prejudice against that defendant or order that service be made within a specified time”).

The deadline for responding the Court's August 10 Order has expired and Plaintiff has failed to submit any response, nor has the Defendant since made an appearance in this action. Since Plaintiff was forewarned of the potential consequences for failing to timely serve Defendants, the Court recommends that this action be dismissed.

Based upon the above, and upon all the files, records, and proceedings herein, **IT IS  
HEREBY RECOMMENDED** that:

This action be dismissed without prejudice for failure to serve the Defendant and for lack of prosecution.

DATED: September 13, 2011

s/Leo I. Brisbois

LEO I. BRISBOIS

United States Magistrate Judge

**N O T I C E**

Pursuant to Local Rule 72.2(b), any party may object to this Report and Recommendation by filing with the Clerk of Court, and serving all parties **by September 27, 2011**, a writing that specifically identifies the portions of the Report to which objections are made and the bases for each objection. A party may respond to the objections within fourteen days of service thereof. Written submissions by any party shall comply with the applicable word limitations provided for in the Local Rules. Failure to comply with this procedure may operate as a forfeiture of the objecting party's right to seek review in the Court of Appeals. This Report and Recommendation does not constitute an order or judgment from the District Court, and it is therefore not directly appealable to the Court of Appeals.